August 11, 2006

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0500729**

PAUL BRUNT
Code Enforcement Appeal

Location: 2020 South 108th Street, in the unincorporated Boulevard Park area.

Appellant: **Paul Brunt**
4861 Lakehurst Lane
Bellevue, Washington 98006
Telephone: (425) 761-7772

King County: Department of Development and Environmental Services,
represented by **DenoBi Olegba**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1528
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal; extend compliance schedule
Department's Final Recommendation:	Deny appeal; extend compliance schedule
Examiner's Decision:	Deny appeal in part; extend compliance schedule

EXAMINER PROCEEDINGS:

Hearing Opened:	July 19, 2006
Hearing Closed:	July 19, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On May 3, 2006, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant Paul Brunt and Maria Brunt that alleged code violations at property located at 2020 South 108th Street in the unincorporated Boulevard Park area. The Notice and Order cited the Brunts and the property with four violations of county code:

   (a) Conversion of a garage into a dwelling unit and construction of an addition that attached the garage to the original dwelling unit without required permits, inspections and approvals;
   (b) Conversion of a detached accessory building into two dwelling units without required permits, inspections and approvals;
   (c) Accumulation of inoperable vehicles and vehicle parts throughout the exterior premises of the site; and
   (d) Accumulation of assorted rubbish, salvage and debris.

   Such violations were required to be corrected by application and obtainment of the necessary permits, inspections and approvals, with a complete application to be submitted by June 19, 2006 for the structural conversions, or restoration of such structures to the original approved uses; removal of inoperable vehicles and vehicle parts or storage within a fully enclosed building by June 5, 2006; and removal of assorted rubbish, salvage and debris by June 5, 2006.

2. Mr. Brunt filed a timely appeal of the Notice and Order, claiming that the citation issuance results from conflicts with a complaining neighbor; that the garage onsite has always been attached to the principal residence and has always been used as a residential bedroom or recreation room; that, while stipulating that there are two "rental units" onsite, no structure onsite other than the principal main residence constitutes a defined dwelling unit; and that the rubbish and automobile parts will be cleaned up. The Appellant also claims that the evidence presented into the case record by DDES does not support a finding of inoperable vehicles present onsite. In addition, the Appellant claims that the development onsite predates prohibitive zoning regulations being applied by the Notice and Order, in effect claiming nonconforming use rights, but presents no evidence of his own nor points to evidence in the record supporting his contention. (The burden of proof of a nonconforming use right lies on the person asserting such claim.) The Appellant also complains of overly harsh enforcement and non-communicativeness by DDES in its actions in this case.

3. The preponderance of the persuasive evidence in the record supports a finding that no buildings existed on the subject property in 1946, and that as of April 30, 1948 a principal residence had been constructed on the site as well as a garage that was connected to the principal residence by a "roofed walk" (forming what has also been called a "breezeway" in the hearing testimony). The garage is described as a double garage of brick construction. Evidence of the presence of the residence and the garage attached by the "roofed walk" structural connection is provided in both photographic and written evidence from King County Assessor Records (see exh. 6, pp. 2 and 3). Later documents by the Assessor's Office have termed the garage a "detached carport" and the attachment the connection a "shed," but that wording seems to be the use of imprecise

terminology since the structural relationship of the residence and attached garage is not shown by persuasive evidence to have changed since initial completion in 1948. There is no persuasive evidence that the garage was not built at the same time as the principal residence, and given the very short time period between the fact of no buildings being present onsite in 1946 and both structural components being present and complete as of April 30, 1948, there is little reason to doubt that they were both constructed at the same time in an attached fashion. (There is a document, Exhibit 6D, in the record that is ostensibly a site plan for a building permit at the time of original residential construction showing an undated and otherwise undescribed graphic mark annotation crossing out a depicted "detached" garage, but that unspecific annotation is of far less persuasion than the clear documentation that both structural components had been constructed and completed in their existing location and attached configuration as of April 30, 1948.)

4. 1998 Assessors records indicate that the garage was being used as a "rental unit," according to a tenant communication to the Assessor employee conducting a 1998 evaluation.

5. One component of Charge 1 of the Notice and Order is "construction of an addition that attached the garage to the original dwelling unit without the required permits, inspections and approvals." That charge is not sustainable given the found fact that the garage and the primary dwelling were constructed simultaneously or at least contemporaneously in an attached fashion.

6. The other component of Charge 1 is that the garage was converted "into a dwelling unit." The preponderance of the evidence in the record is insufficient to sustain such charge. In order to constitute a dwelling unit as such term is used in King County land use regulations, a building area in question must contain kitchen facilities, among other things. [KCC 21A.06.345] There is no evidence in the record that the garage contains kitchen facilities and thus constitutes a defined separate dwelling unit. (It should be noted that the charge is not conversion into "accessory living quarters," a different land use classification than "dwelling unit" or "accessory dwelling unit." [KCC 21A.06.010, 21A.06.345 and 21A.06.350] It may or may not be that conversion or other establishment of accessory living quarters has occurred onsite, but that is not what is charged in the Notice and Order.)

7. Violation Charge 1 of the Notice and Order is not supported by the evidence in the record and is not sustainable.

8. Violation Charge 2 of the Notice and Order is "conversion of a detached accessory building into two dwelling units without the required permits, inspections and approvals…" Again, the alleged conversion "into two dwelling units" requires a finding that residential area in the detached accessory building is a defined dwelling unit or units under county code. [KCC 21A.06.345] As was the case with the alleged garage conversion to a dwelling unit, there is no evidence in the record to demonstrate that there is any kitchen facility associated with either of the alleged two dwelling units in the detached accessory building onsite, and therefore violation Charge 2 is not supported by a preponderance of the evidence and is unsustainable.

9. One component of violation Charge 3 is the accumulation of inoperable vehicles onsite. The only evidence submitted into the record to support such charge consists of pictures of an automobile with a flat tire and with a tarp partly covering it, and testimony that the state of the vehicle has not changed and the car has not been moved during the time that the property was under observation by the code enforcement officer involved in the case. Such evidence is insufficiently persuasive of an inoperable state. There is persuasive evidence that vehicle parts are stored in the exterior premises of the site, and the Appellant has essentially stipulated to such presence by affirming that the vehicle parts will be "cleaned up" by his tenants. The presence of vehicle parts component of violation Charge 3 will be sustained as supported by the evidence and

the Appellant's stipulation, but the charge of the presence of inoperable vehicles is not sustained. Charge 3 therefore will be only partially sustained and will be the subject of a revised compliance schedule as set forth below.

10. The evidence in the record supports a finding that there is an accumulation of rubbish and debris on the exterior of the site, and such charge shall be sustained. The Appellant has stipulated in effect to such presence, asserting that in part it consists of tenant possessions, and has affirmed that it also will be "cleaned up." Violation Charge 4 is sustainable and shall be the subject of a revised compliance schedule as set forth below.

11. The preponderance of the evidence in the record demonstrates that only the vehicle parts and rubbish, salvage and debris violations are proven by a preponderance of the evidence in the record and that those violation charge components are correct. The remainder of the allegations and charges in the Notice and Order are not supported by the evidence and the appeal shall be sustained in such regard and those charges reversed.

12. DDES in its department report recommends a period of 30 days to make the required corrections, in part assuming that the structural violations alleged in the Notice and Order would be sustained and contending that the Appellant had already had enough time to make the "required" corrections. Given the time period necessary for disposition of the appeal, the examiner shall revise the time period for correction of the vehicle parts and rubbish and debris violations and impose a correction deadline of 45 days, by which time the property shall be brought into full compliance with county code requirements governing the exterior storage of vehicle parts and the presence of rubbish, salvage and debris on the exterior portions of the property.

13. The contentious issue of the Appellant's true residence is moot given the unsustainability of Charges 1 and 2; since no violating dwelling units have been proven by DDES, the side issue of owner residence onsite (a requirement of establishing accessory dwelling units [KCC 21A.08.030(B)(7)(a)(3)]) need not be determined.

14. The Appellant's complaints regarding DDES's enforcement approach are matters of administrative responsibility in the executive branch of King County government. They should be addressed to the supervisory chain of command if desired to be pursued. To the extent they may constitute legal complaints of unfair or inequitable enforcement, they are not matters under the Examiner's jurisdiction: They are tantamount to a common law claim of *equitable estoppel*, that the county should be barred from enforcing the matters at hand because of unfair treatment. The Examiner as a quasi-judicial hearing officer is generally limited to adjudicating matters under "black letter" law, *i.e.*, law enacted in statutory or ordinance form. Washington case law limits the Examiner's exercise of common law in deciding cases. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] Any equity claim would have to be brought in a court of law.

CONCLUSION:

1. As violation Charges 1 and 2 have not been supported by a preponderance of the evidence in the record, they are not sustained and shall be reversed. As the inoperative vehicle component of violation Charge 3 has also not been supported by a preponderance of the evidence, that component too shall be reversed; the charge of violation regarding the presence of vehicle parts in exterior storage on the property shall be sustained and that part of Charge 3 upheld. Similarly, the Charge 4 violation by maintaining rubbish, salvage and debris in the exterior of the subject property is supported by a preponderance of the evidence, and the Notice and Order shall be

sustained in such regard. The appeal shall accordingly be denied in part with respect to the vehicle parts and the rubbish, salvage and debris, but shall be sustained otherwise, and the respective Charges 1 and 2 and the inoperative vehicle component of Charge 3 reversed. Compliance to correct the found violations shall be required in the schedule set forth below.

DECISION:

The appeal is DENIED with respect to the charges of violation of county code by maintaining exterior storage of vehicle parts and rubbish, salvage and debris on the subject property, except that the Notice and Order deadline for compliance with respect to those topical items is revised as stated in the following order. The appeal is otherwise SUSTAINED with respect to violation Charges 1, 2 and the inoperative vehicle component of Charge 3, and those charges/charge components are reversed.

ORDER:

1. The vehicle parts in exterior storage on the subject property shall be removed from the property or placed within an enclosed building *by no later than* **September 25, 2006**.

2. Rubbish, salvage and debris shall be removed from the exterior portions of the property so as to bring the subject property into compliance with county code regulation of such items *by no later than* **September 25, 2006**.

3. No penalties shall be assessed against the Appellant Paul Brunt and/or Maria Brunt and/or the property if the deadlines stated within the above conditions are met. If any deadline is not met, DDES may impose penalties against the Brunts and/or the property retroactive to the date of this order.

ORDERED this 11th day of August, 2006.

_____

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 11th day of August, 2006 via certified mail to the following:

Paul Brunt
4861 Lakehurst Lane
Bellevue, Washington 98006

TRANSMITTED this 11th day of August, 2006, to the following parties and interested persons of record:

Paul Brunt
4861 Lakehurst Lane
Bellevue WA 98006

Deidre Andrus
DDES/LUSD
MS OAK-DE-0100

DenoBi Olegba
DDES/LUSD
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Toya Williams
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MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JULY 19, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0500729.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was DenoBi Olegba, representing the Department; and Paul Brunt, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Staff report to the Hearing Examiner
Exhibit No. 2	Copy of the Notice & Order issued May 3, 2006
Exhibit No. 3	Copy of the Statement of Appeal received May 19, 2006
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Photographs (labeled 5a-e & 1-15) taken June and July of 2006
Exhibit No. 6(a-e)	Correspondence on residence along with various postings
Exhibit No. 7	USPS forms for certified mail receipts showing the date of mailing (5/3/06)

PTD:gao
E0500729 RPT